

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

MARC S. KIRSCHNER, AS LITIGATION
TRUSTEE OF THE LITIGATION SUB-
TRUST,

Plaintiff

v.

JAMES D. DONDERO; MARK A. OKADA;
SCOTT ELLINGTON; ISAAC LEVENTON;
GRANT JAMES SCOTT III; FRANK
WATERHOUSE; STRAND ADVISORS, INC.;
NEXPOINT ADVISORS, L.P.; HIGHLAND
CAPITAL MANAGEMENT FUND
ADVISORS, L.P.; DUGABOY INVESTMENT
TRUST AND NANCY DONDERO, AS
TRUSTEE OF DUGABOY INVESTMENT
TRUST; GET GOOD TRUST AND GRANT
JAMES SCOTT III, AS TRUSTEE OF GET
GOOD TRUST; HUNTER MOUNTAIN
INVESTMENT TRUST; MARK & PAMELA
OKADA FAMILY TRUST – EXEMPT TRUST
#1 AND LAWRENCE TONOMURA AS
TRUSTEE OF MARK & PAMELA OKADA
FAMILY TRUST – EXEMPT TRUST #1;
MARK & PAMELA OKADA FAMILY
TRUST – EXEMPT TRUST #2 AND
LAWRENCE TONOMURA IN HIS
CAPACITY AS TRUSTEE OF MARK &
PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #2; CLO HOLDCO, LTD.;
CHARITABLE DAF HOLDCO, LTD.;
CHARITABLE DAF FUND, LP.; HIGHLAND

Adv. Pro. No. 21-03076-sgj

THE DONDERO DEFENDANTS'
REPLY IN SUPPORT OF THE MOTION
TO WITHDRAW THE REFERENCE

DALLAS FOUNDATION; RAND PE FUND I,
LP, SERIES 1; MASSAND CAPITAL, LLC;
MASSAND CAPITAL, INC.; SAS ASSET
RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

**THE DONDERO DEFENDANTS' REPLY IN SUPPORT OF
MOTION TO WITHDRAW THE REFERENCE**

James Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. (collectively, the “Dondero Defendants”) hereby file this Reply in Support of the Motion to Withdraw the Reference (the “***Reply***”), and respectfully state as follows:

PRELIMINARY STATEMENT

Nothing in the Litigation Trustee’s Response in Opposition to Defendants’ Motions to Withdraw the Reference (the “***Opposition***”) [Dkt. No. 95] changes that the reference must be withdrawn to the District Court. For the reasons set forth in the Motion, this Reply, and the replies of all other defendants in this Adversary Proceeding, the reference should be immediately withdrawn.¹

ARGUMENT AND AUTHORITIES

I. The Litigation Trustee Concedes The Reference Must Be Withdrawn.

Critically, the Litigation Trustee’s Opposition concedes that there are at least “some non-core claims and claims on which Defendants have a right to a jury trial.” *See* Opposition, Dkt. No.

¹ For the convenience of the Court and the parties, the Dondero Defendants hereby join in and adopt the points and authorities offered in the Reply in Support of Motion to Withdraw the Reference of the Causes of Action in the Complaint Asserted Against the Former Employee Defendants, the Reply in Support of the Okada Parties' Motion to Withdraw the Reference, and the replies of the other defendants in this Adversary Proceeding. To the extent the arguments set forth in the other defendants’ replies—which respond to the Litigation Trustee’s single Opposition to all pending motions to withdraw the reference—also apply with respect to the Dondero Defendants, those arguments are hereby incorporated by reference as if fully set forth herein.

95, ¶ 45 n.40. The Dondero Defendants have not waived their jury trial rights and, as a result, the Bankruptcy Court cannot finally adjudicate the majority of the claims asserted against the Dondero Defendants. *See* Dkt. 45 at 11-14. Immediate withdrawal of the reference is warranted for this reason alone. *See In re Align Strategic Partners LLC*, 2019 WL 2527221, at *5 (Bankr. S.D. Tex. Mar. 5, 2019) (recommending that the reference be immediately withdrawn based on defendant’s right to a jury trial). Further, where, as here, an adversary proceeding encompasses both core and non-core claims and jury trial rights, immediate withdrawal of the reference promotes judicial efficiency by enabling the District Court to “to gain familiarity with the facts of the Adversary Proceeding before trial.” *See In re Quality Lease & Rental Holdings, LLC*, 2016 WL 416961, at *6 (Bankr. S.D. Tex. Feb. 1, 2016) (“If the bankruptcy court were to try the case and then enter a judgment on core claims and a report and recommendation to the district court on the non-core claims, the ultimate resolution would be complex and time-consuming.”).

Mandatory withdrawal is also required because the claims asserted against the Dondero Defendants involve substantial and material consideration of federal tax and securities laws. *See* Dkt. No. 45 at 10 n.2; *see also* NexPoint Advisors, L.P. and HCMFA’s Motion to Withdraw the Reference, Dkt No. 40 at 5-13.

II. Immediate Withdrawal Is Warranted.

The Litigation Trustee’s Opposition completely ignores that under binding Fifth Circuit precedent, the Bankruptcy Court has no jurisdiction to adjudicate the numerous state law-based claims asserted against the Dondero Defendants. The Litigation Trustee does not even address that *Craig’s Stores* narrowed the Bankruptcy Court’s post-confirmation jurisdiction and rejected the argument that jurisdiction continues to exist if a dispute is “related to” the bankruptcy in satisfaction of 28 U.S.C. § 1334(b). *See Bank of La. v. Craig’s Stores of Tex., Inc. (In re Craig’s*

Stores of Tex., Inc.), 266 F.3d 388, 390 (5th Cir. 2001). As set forth in the replies of the Former Employee Defendants, the Okada Parties, and NexPoint and HCMFA, the Litigation Trustee does not provide any basis for the Court to find that any of the *Craig's Stores* factors have been satisfied. Under binding Fifth Circuit precedent, the Bankruptcy Court lacks post-confirmation jurisdiction over the non-core claims set forth in the Kirschner Complaint and the reference must therefore be withdrawn. *See* Dkt. No. 45 at 7-10.

CONCLUSION

For all of these reasons, and set forth fully in the Dondero Motion and in the Replies, the Dondero Defendants respectfully request that the Court immediately withdraw the reference of the Kirschner Complaint from the United States Bankruptcy Court for the Northern District of Texas to the United States District Court for the Northern District of Texas.

Dated: March 14, 2022

Respectfully submitted,

DLA PIPER LLP (US)

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